

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASON SCOTT HOUNIHAN,
Plaintiff,

v.

JOSE C. VILLASENOR,
Defendant.

Case No. 1:23-cv-00163-EPG (PC)

SCREENING ORDER

ORDER ALLOWING PLAINTIFF'S
COMPLAINT TO PROCEED ON HIS
EIGHTH AMENDMENT SEXUAL
ASSAULT CLAIM AGAINST
DEFENDANT VILLASENOR

ORDER FINDING SERVICE OF
COMPLAINT APPROPRIATE, AND
FORWARDING SERVICE DOCUMENTS
TO PLAINTIFF TO COMPLETE AND
RETURN WITHIN THIRTY DAYS

Jason Hounihan ("Plaintiff") is a prisoner¹ proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on February 2, 2023. (ECF No. 1). Plaintiff alleges that defendant Villasenor ordered a nurse to insert his hands into Plaintiff's rectum even though Plaintiff had already been x-rayed and a doctor clearly stated that there were no foreign objects in Plaintiff's body. The complaint is now before this Court for screening.

¹ Plaintiff does not allege whether he is awaiting trial or if he has already been convicted. As the Court finds that Plaintiff's claim should proceed under the higher Eighth Amendment standards for prisoners who have been convicted, the Court need not address this issue at this time.

The Court has reviewed the complaint and finds that the following claim should proceed past screening: Plaintiff's Eighth Amendment sexual assault claim against defendant Villasenor.

As the Court has found that Plaintiff's only claim should proceed past screening, the Court will authorize service of process on defendant Villasenor.

I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis* (ECF No. 4), the Court may also screen the complaint under 28 U.S.C. § 1915. "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint is required to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this plausibility standard. Id. at 679. While a plaintiff's allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a plaintiff's legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

Pleadings of *pro se* plaintiffs "must be held to less stringent standards than formal

pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that *pro se* complaints should continue to be liberally construed after Iqbal).

II. SUMMARY OF PLAINTIFF’S COMPLAINT

Plaintiff alleges as follows in his complaint:

Plaintiff was taken to a hospital to be x-rayed for contraband, even though he did not have any. The doctor clearly stated that there were no foreign objects in Plaintiff’s body. Nevertheless, defendant Villasenor, a deputy at the Tulare County Sheriff’s Office, instructed a male nurse to stick his hands up Plaintiff’s rectum.

Plaintiff has had internal pain since this incident. Additionally, Plaintiff suffers from PTSD, he is distraught, and he was humiliated.

Plaintiff has been asking for the Prison Rape Elimination Act hotline number for three months, but it has not been provided to Plaintiff and it is not posted.

III. ANALYSIS OF PLAINTIFF’S COMPLAINT

A. Section 1983

The Civil Rights Act under which this action was filed provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant deprived him of rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.

2006); see also Marsh v. County of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of state law”). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.’” Preschooler II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be established when an official sets in motion a ‘series of acts by others which the actor knows or reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

A plaintiff must demonstrate that each named defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-77. In other words, there must be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by the plaintiff. See Monell v. Dep’t of Soc. Servs. of City of N.Y., 436 U.S. 658, 691, 695 (1978).

Supervisory personnel are not liable under section 1983 for the actions of their employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a supervisory position, the causal link between the supervisory defendant and the claimed constitutional violation must be specifically alleged. Iqbal, 556 U.S. at 676-77; Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). To state a claim for relief under section 1983 based on a theory of supervisory liability, a plaintiff must allege some facts that would support a claim that the supervisory defendants either: were personally involved in the alleged deprivation of constitutional rights, Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); “knew of the violations and failed to act to prevent them,” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); or promulgated or “implement[ed] a policy so deficient that the policy itself is a repudiation of constitutional rights and is the

moving force of the constitutional violation,” Hansen, 885 F.2d at 646 (citations and internal quotation marks omitted).

For instance, a supervisor may be liable for his or her “own culpable action or inaction in the training, supervision, or control of his [or her] subordinates,” “his [or her] acquiescence in the constitutional deprivations of which the complaint is made,” or “conduct that showed a reckless or callous indifference to the rights of others.” Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991) (citations, internal quotation marks, and brackets omitted).

B. Sexual Assault in Violation of the Eighth Amendment²

Sexual harassment or abuse of an inmate by a prison official is a violation of the Eighth Amendment. Wood v. Beauclair, 692 F.3d 1041, 1046, 1051 (9th Cir. 2012) (citing Schwenk v. Hartford, 204 F.3d 1187, 1197 (9th Cir. 2000)). In evaluating such a claim, “courts consider whether ‘the official act[ed] with a sufficiently culpable state of mind’”—the subjective component—“and if the alleged wrongdoing was objectively ‘harmful enough’ to establish a constitutional violation”—the objective component. Wood, 692 F.3d at 1046 (alteration in original) (quoting Hudson v. McMillian, 503 U.S. 1, 8 (1992)). As “sexual assault serves no valid penological purpose ... where an inmate can prove that a prison guard committed a sexual assault, we presume the guard acted maliciously and sadistically for the very purpose of causing harm, and the subjective component of the Eighth Amendment claim is satisfied.” Bearchild v. Cobban, 947 F.3d 1130, 1144 (9th Cir. 2020) (citing Wood, 692 F.3d at 1050; Schwenk, 204 F.3d at 1196 n.6). “Any sexual assault is objectively ‘repugnant to the conscience of mankind’ and therefore not *de minimis* for Eighth Amendment purposes.” Bearchild, 947 F.3d at 1144 (quoting Hudson, 503 U.S. at 10).

In sum,

a prisoner presents a viable Eighth Amendment claim where he or she proves that a prison staff member, acting under color of law and without legitimate penological justification, touched the prisoner in a sexual manner or otherwise engaged in sexual

² While the Court is applying the Eighth Amendment, as discussed above, the Court is not making a determination as to whether Plaintiff was a pretrial detainee or a convicted prisoner at the time of the incident.

conduct for the staff member's own sexual gratification, or for the purpose of humiliating, degrading, or demeaning the prisoner.

Bearchild, 947 F.3d at 1144.

Plaintiff alleges that defendant Villasenor directed a nurse to stick his hands up Plaintiff's rectum, even though a doctor had clearly stated that there were no foreign objects in Plaintiff's body. Plaintiff has had internal pain since this incident. Additionally, Plaintiff suffers from PTSD, he is distraught, and he was humiliated.

Liberally construing Plaintiff's complaint, and as this case is at the screening stage, the Court finds that Plaintiff's Eighth Amendment sexual assault claim against defendant Villasenor should proceed past screening.

IV. CONCLUSION AND ORDER

The Court has screened Plaintiff's complaint and finds that Plaintiff's Eighth Amendment sexual assault claim against defendant Villasenor should proceed past screening.

As the Court has found that Plaintiff's only claim should proceed past screening, the Court will authorize service of the complaint on defendant Villasenor.

Accordingly, based on the foregoing, it is HEREBY ORDERED that:

1. This action proceed on Plaintiff's Eighth Amendment sexual assault claim against defendant Villasenor;
2. Service of Plaintiff's complaint (ECF No. 1), which was filed on February 2, 2023, is appropriate for the following defendant:

a. Jose C. Villasenor, who was employed as a Tulare County Sheriff's Office Deputy at Bob Wiley Detention Facility;

3. The Clerk of Court shall SEND Plaintiff one (1) USM-285 form, one (1) summons, a Notice of Submission of Documents form, an instruction sheet, and a copy of the complaint filed on February 2, 2023 (ECF No. 1);
4. Within **thirty (30) days** from the date of service of this order, Plaintiff shall complete the attached Notice of Submission of Documents and submit the completed Notice to the Court with the following documents:

- a. A completed summons for each defendant;
 - b. A completed USM-285 form for each defendant; and
 - c. Two (2) copies of the endorsed complaint filed on February 2, 2023 (ECF No. 1);
5. Plaintiff need not attempt service on Defendant and need not request waiver of service. Upon receipt of the above-described documents, the Court will direct the United States Marshals Service to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment of costs; and
 6. Failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: February 7, 2023

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE